



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

April 10, 1997

The Honorable David M. Motley
County Attorney
Kerr County Courthouse, Suite B20
700 E. Main Street
Kerrville, Texas 78028-5324

Letter Opinion No. 97-033

Re: Whether a justice of the peace has authority
to subpoena ambulance "run sheets" for purposes
of an inquest (ID# 38895)

Dear Mr. Motley:

You ask whether a justice of the peace has authority to subpoena ambulance "run sheets"¹ pursuant to his duty and authority to conduct inquests under Code of Criminal Procedure, chapter 49, subchapter A. In counties which do not have a medical examiner, the justice of the peace is required to conduct an inquest into the death of a person who dies in the county under the circumstances stated in article 49.04(a) of the Code of Criminal Procedure. You inform us that a Justice of the Peace in Kerr County needed to study the "run sheet" of a city ambulance in connection with a death investigation. He was informed that the report could not be released to him, even pursuant to a lawful subpoena, because provisions of the Health and Safety Code made this information confidential.

Section 773.091 of the Health and Safety Code provides for the confidentiality of EMS records:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.²

¹You do not describe ambulance "run sheets," but we assume they contain information about the condition of and care given to individuals while the ambulance is transporting them to the hospital. See generally Open Records Decision No. 578 (1990) (confidentiality of various ambulance activity reports).

²Health & Safety Code § 773.091. We assume that the "run sheets" are records covered by this provision.

This confidentiality provision applies even if the patient who received emergency medical services has died.³

The privilege may be claimed in any criminal, civil, or administrative proceeding, notwithstanding rule 501, Texas Rules of Criminal Evidence, and rule 501, Texas Rules of Civil Evidence.⁴ Exceptions allowing release of the confidential information in court or administrative proceedings are set out in section 773.092 of the Health and Safety Code. The exceptions for court or administrative proceedings found in section 773.092 of the Health and Safety Code apply to certain proceedings against EMS personnel, collection of a claim for EMS care, litigation to recover damages for any physical or mental condition of the patient, and a criminal prosecution in which the patient is a victim, witness, or defendant.⁵ None of the exceptions specifically make EMS patient information available in an inquest hearing.

An inquest conducted by a justice of the peace is a court proceeding. A justice of the peace is a judicial officer,⁶ and an "inquest" is "an investigation into the cause and circumstances of the death of a person, and a determination, made with or without a formal court hearing, as to whether the death was caused by an unlawful act or omission."⁷ An "inquest hearing" is a "formal court hearing held to determine whether the death of a person was caused by an unlawful act or omission and, if the death was caused by an unlawful act or omission, to obtain evidence to form the basis of a criminal prosecution."⁸ It may be held with or without a jury, and the justice of the peace may issue subpoenas to enforce the attendance of a witness at the hearing.⁹

³See *id.* §§ 773.092(a)(4) (exception for civil litigation brought on behalf of patient for recovery of damages "for any physical or mental condition, including death of the patient"); .093(a) (consent to release of records may be signed by patient's personal representative if patient is deceased).

⁴*Id.* § 773.091(e).

⁵Health & Safety Code § 773.092(a).

⁶See Tex. Const. art. V, §§ 1 (judicial power of state is vested in various courts, including courts of justices of peace), 19 (jurisdiction of justices of peace).

⁷Code Crim. Proc. art. 49.01(1).

⁸Code Crim. Proc. art. 49.01(3). See *Parsons v. State*, 271 S.W.2d 643, 652-52 (Tex. Crim. App.) *cert. denied*, 348 U.S. 837 (1954); *Peirson v. Galveston County*, 131 S.W.2d 27 (Tex. Civ. App.--Austin 1939, no writ); Open Records Decision No. 529 (1989) at 2-3. The medical examiner must be a licensed physician, and to the extent possible, must be appointed from persons "having training and experience in pathology, toxicology, histology and other medico-legal sciences." Code Crim Proc. art. 49.25, § 2.

⁹Code Crim. Proc. art. 49.14(b), (e).

A justice of the peace is *required* to conduct an inquest in eight particular instances set forth in article 49.04(a) of the Code of Criminal Procedure.¹⁰ See Attorney General Opinion WW-1261 (1962). As part of the inquest, a justice of the peace is directed by article 49.15 to “make an inquest record for each inquest he conducts,” and that record “must include a report of the events, proceedings, findings, and conclusions of the inquest.” In our opinion, a justice of the peace cannot conduct an inquest in the manner prescribed by statute unless he has access to all information that may be pertinent to the circumstances of death.

The law governing inquests has been in place for well over one hundred years. See, e.g., Act approved Mar. 17, 1887, 20th Leg., R.S., ch. 45, 1887 Tex. Gen. Laws 31. By contrast, that portion of the Health and Safety Code regulating the confidential communications of emergency medical services personnel was first adopted in 1991. Act of May 27, 1991, 72d Leg., R.S., ch. 605, § 8, 1991 Tex. Gen. Laws 2199, 2203. We do not believe that the legislature would have so casually overturned the authority of a justice of the peace to subpoena all records relevant to an inquest. Had it meant to change the law of more than a century in such a dramatic fashion, we believe it would have set forth its intent with unmistakable clarity.

Furthermore, article 49.04, the provision that requires a justice of the peace to conduct an inquest in eight specific instances, was last amended in 1995. Act of May 27, 1995, 74th Leg., R.S., ch. 878, § 2, 1995 Tex. Gen. Laws 4367, 4372. Since, in our opinion, a justice cannot effectively conduct an inquest in a situation in which he is denied access to relevant information, article 49.04 and section 773.091, Health and Safety Code, are in irreconcilable conflict. Under the provisions of section 311.025, Government Code, “if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.” Thus, in a case of

¹⁰A justice of the peace shall conduct an inquest into the death of a person who dies in the county served by the justice if:

- (1) the person dies in prison under circumstances other than those described by Section 501.055(b), Government Code, or in jail;
- (2) the person dies an unnatural death from a cause other than a legal execution;
- (3) the body of the person is found and the cause or circumstances of death are unknown;
- (4) the circumstances of the death indicate that the death may have been caused by unlawful means;
- (5) the person commits suicide or the circumstances of the death indicate that the death may have been caused by suicide;
- (6) the person dies without having been attended by a physician;
- (7) the person dies while attended by a physician who is unable to certify the cause of death and who requests the justice of the peace to conduct an inquest; or
- (8) the person is a child who is younger than six years of age and the death is reported under Chapter 264, Family Code.

irreconcilable conflict, article 49.04 prevails over antithetic portions of section 773.091. We hold, therefore, that article 49.04, Code of Criminal Procedure, acts as an exception to section 773.091, Health and Safety Code, and permits a justice of the peace to subpoena emergency medical records in any instance in which the justice is required to perform an inquest.

S U M M A R Y

Article 49.04, Code of Criminal Procedure, acts as an exception to section 773.091, Health and Safety Code, and permits a justice of the peace to subpoena emergency medical records in any instance in which the justice is required to perform an inquest.

Yours very truly,

A handwritten signature in cursive script that reads "Rick Gilpin".

Rick Gilpin
Deputy Chief
Opinion Committee